

WILLIAM J. PEPPER

IBLA 96-127

Decided August 28, 1998

Appeal from a decision of the California State Office, Bureau of Land Management, declaring association placer mining claim null and void ab initio in part. CAMC 266649.

Reversed.

1. Mining Claims: Lands Subject to--Wild and Scenic Rivers Act

Mining claims located on land withdrawn from entry under the mining laws are null and void ab initio. When the record on appeal does not establish that the lands in question were withdrawn from mineral entry, a BLM decision declaring a mining claim null and void ab initio on such grounds will be reversed. Lands within a section of the Wild and Scenic River System designated as a scenic river area are not withdrawn from mineral entry.

APPEARANCES: William J. Pepper, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

William J. Pepper has appealed from an October 27, 1995, decision of the California State Office, Bureau of Land Management (BLM) declaring portions of his association placer mining claim, the Buckhorn II (CAMC 266649) null and void ab initio, or without legal effect from the beginning. The claim was located on September 3, 1995, and recorded locally on September 21, 1995. A location notice was filed with BLM on October 20, 1995, claiming the right to locate the claim pursuant to both the Mining Law of 1872 and "P.L. 359." <sup>1/</sup> The location notice reveals that the claim is located in sec. 7, T. 23 N., R. 11 E., and sec. 12, T. 23 N., R. 10 E., Mount Diablo Meridian (MDM); more specifically, in the N $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of sec. 12, T. 23 N., R. 10 E., MDM, and the

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<sup>1/</sup> Public Law 359 is a reference to the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1994). This Act provides for the opening of public lands within powersite withdrawals to location of mining claims subject to certain conditions.

N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of sec. 7, T. 23 N., R. 11 E., MDM.

In its October 1995 decision, BLM rejected Appellant's assertion that the claim was locatable under the Mining Claims Rights Restoration Act, finding that the placer claim did not appear to be situated within a powersite withdrawal. Appellant has not disputed this finding. Further, BLM found that portions of the claim located within "section 12, T. 23 N., R. 10 E." were null and void ab initio because BLM official records revealed that sec. 12 is located within a proposed Forest Service Exchange serialized as CACA 31257 FD. (BLM Decision at 1.) According to BLM's decision,

[w]ith a letter dated March 2, 1994, the Forest Service requested that additional lands be added to the exchange, including section 12, T. 23 N., R. 10 E., MDM. The regulations were amended on November 18, 1993, to close the land in proposed Forest Service Exchanges to the location and entry of mining claims for up to five years from the date the records are noted (43 CFR 2202.1(b)). Section 12 was noted to the records on March 3, 1994.

Hence, BLM found that the lands in sec. 12, T. 23 N., R. 10 E. were closed to mineral entry on September 3, 1995, the date of Pepper's location, and that portion of Pepper's placer claim located in sec. 12 was declared null and void ab initio.

In his Statement of Reasons on appeal, Pepper maintains:

[Our] \* \* \* claim is a 60 acre association placer claim located in both T23N R11E Sec. 7 M.D. and T23N R10E Sec. 12 M.D.

The information you have provided concerning a proposed Forest Service Exchange, serialized as CACA31257FD, does not show our claim to be within those boundaries.

You have stated that "with a letter dated March 2nd 1994, the Forest Service requested that additional lands be added to the exchange, including section 12, T. 23 N., R.10 E., MDM." The actual Forest Service letter does not show sec. 12 to be listed under T23N R10E. The Decision to null and void said portion of our claim appears to be based on a transposition of section numbers as they relate to township and range. There is a sec. 12 listed under T23N R11E, but this is an area that is actually several miles from our claim.

[1] As an initial matter, we note that it is well established that a mining claim located on land closed to entry under the mining laws confers no rights on the locator and is properly declared null and void ab initio. See John C. Heter, 143 IBLA 123 (1998); Jesse R. Collins, 139 IBLA 392 (1997); Lucian B. Vandegrift, 137 IBLA 308 (1997). Further, filing of the letter would segregate lands included in the proposed exchange from appropriation. See 43 C.F.R. § 2202.1(b). Appellant claims, however,

that BLM has erroneously reached its conclusion that the lands on which his claim are located were withdrawn from mineral entry prior to location of the Buckhorn II. We agree.

The BLM decision states that the Forest Service letter of March 2, 1994, requested that "additional lands be added to the exchange, including section 12, T. 23 N., R. 10 E. MDM." (BLM Decision at 1.) This is not correct. The file contains a copy of the March 2, 1994, letter from the Forest Service requesting "Additional Serialization and Segregation, CACA-31257" showing additional Federal and non-Federal lands to be included in the exchange on Schedule B. Schedule B, however, shows only that additional lands in secs. 1 and 2, T. 23 N., R. 10 E. were included in the exchange, as well as lands within sec. 12, T. 23 N., R. 11 E. This is confirmed by notations on the Master Title Plat and the Historical Index in the file for T. 23 N., R. 11 E. Thus, Appellant has correctly asserted that the March 2, 1994, letter segregated sec. 12, T. 23 N., R. 11 E., and not sec. 12, T. 23 N., R. 10 E. Accordingly, the record does not support BLM's holding here.

Our own review of the record discloses that the Middle Fork Feather River was designated a wild and scenic river by the Wild and Scenic Rivers Act. 16 U.S.C. § 1274(3) (1994). It appears from the Master Title Plats in the file that Appellant's mining claim is situated on land within the Plumas National Forest which has been classified as part of a scenic river area within the Middle Fork Feather Wild and Scenic River. 45 Fed. Reg. 4219 (Mar. 4, 1970).

Section 9 of the Wild and Scenic Rivers Act, 16 U.S.C. § 1280(b) (1994), withdraws from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank, or are situated within one-quarter mile of the bank, of any river actually designated as a "wild" river under the system. Robert L. Payne, 107 IBLA 71 (1989). The portion of the river in which Appellant's claim is situated, however, is classified as a "scenic" river area. Although claims located on such lands are subject to restrictions as to the surface rights acquired, they are not withdrawn from location. See 16 U.S.C. § 1280(a)(ii) (1994). We find no basis to affirm BLM's decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the October 27, 1995, decision of the California State Office, BLM, is reversed.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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David L. Hughes  
Administrative Judge